***THE HON'BLE SRI JUSTICE P.S.NARAYANA**

+W.P.No.16173 of 2007

% 11-10-2007

Smt. Shaik Raheema ..

Petitioner

And

$ The Joint Collector, Nellore

And another ..

Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Sri V.Sudhakar Reddy

^ Counsel for respondents : G.P. for Civil Supplies

?CASES REFERRED :

[1] 1994 (1) A.L.T., 1682

[2] 1993 (3) A.L.T., 442.

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.16173 of 2007

Date: 11th October, 2007

Between :-

Smt. Shaik Raheema ..

Petitioner

And

The Joint Collector, Nellore
And another ..
Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.16173 of 2007

ORDER:-

Heard Sri V.Sudhakar Reddy, the learned Counsel representing writ petitioner and the learned G.P. for Civil

Supplies.

2. The Writ Petition is filed for a Writ of Mandamus declaring the order Rc.No.D.330/2207 dt.9-7-2007 issued by the Tahsildar, Indukurpet, the 2nd respondent herein, where under the authorization of the petitioner is suspended pending finalization of the case u/s.6-A of the Essential Commodities Act 1955, before the Joint Collector, Nellore and further action of the 1st respondent in not passing any orders either on stay petition or on appeal filed by the petitioner on 21-7-2007 as illegal, arbitrary, violative of principles of natural justice and contrary to the provisions of A.P.State Public Distribution System Control Order 2001, and set aside the order of the 2nd respondent and to pass such other suitable orders.

3. Sri V.Sudhakar Reddy, the learned Counsel representing the writ petitioner had placed strong reliance on the decisions in ***B.SATYANARAYANA v. JOINT COLLECTOR (C.S.)***[1]***;*** and also ***P.HARUMANTHA RAO v. CHIEF RATIONING OFFICER***[2]. The learned Counsel also would contend that the A.P.Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973, Clause 3(4) corresponds to clause 5(4) of the A.P.State Public Distribution System Control Order,

2001. Hence, the learned Counsel would contend that the impugned proceeding to be quashed.

4. The learned G.P. for Civil Supplies however would maintain that it may be that independent enquiry to be conducted and in view of the facts and circumstances, let liberty be given to the concerned authorities to proceed with the further enquiry if they require to do so.

5. The writ petitioner had averred that she belongs to minority community and she had been distributing the essential commodities to the cardholders for the past 7 years without any complaint whatsoever either from the cardholders or from the authorities. It is further stated that while so on 20-6-2007 the District Supply Officer, Nellore along with the Civil Supplies Dy.Tahasildar, Indukurpet has inspected her shop in her absence and seized certain commodities though there are no variations and filed a report under Section 6-A of the Essential Commodities Act before the Joint Collector, Nellore. It is also stated that thereafter, the 1st respondent passed orders for interim disposal of the seized stock by his proceedings dated 29-6-2007. It is also further stated that basing on the proceedings of the 1st respondent, the Tahsildar, Indukurpet – the 2nd respondent issued an order Rc.D.330/2007, dated 9-7-2007 signed on 13-7-2007

placing the petitioner's authorization under suspension. The order of the 2nd respondent reads as follows:-

> *"The case has been taken on file in the Court of the Joint Collector, Nellore. In the reference 2nd read above, the Joint Collector, Nellore has issued orders to distribute the above said essential commodities to the cardholders and to remit the sale proceeds to 8443 – Civil Deposits-101-Revenue Deposits.*
>
> *In the above circumstances, Smt.Sk.Raheema, F.P.Shop Dealer, Mothalu is hereby suspended pending finalization of the case under Section 6-A of the Essential Commodities Act 1955 before the Joint Collector, Nellore and Sri P.Basha, Fair Price Shop Dealer, Somarajupalli is kept incharge for the Fair Price Shop, Mothalu until further orders. He should distribute the essential commodities to the cardholders in the Mothalu village."*

It is also stated that it is clear from the above that the 2nd respondent neither assigned any reasons nor framed any charges to place the petitioner's authorization under suspension, but he has suspended her authorization pending finalization of the case under Section 6-A of Essential Commodities Act which is not tenable under Law. It is further stated that the 2nd respondent failed to consider the fact that the proceedings u/s.6-A are distinct from that of the disciplinary proceedings. It is also stated

that the 2nd respondent is conferred with the power under clause 5(4) of the A.P.State Public Distribution System Control Order, 2001 to take disciplinary action against the Fair Price Shop Dealers and that he has to exercise his mind independently notwithstanding the fact that the proceedings u/s.6-A is pending. It is further stated that even, there are specific instructions from the Government not to place the authorization of the Fair Price Shop Dealers under suspension on the ground of pendency of 6-A case and also this Hon'ble Court time and again held that the powers conferred under clause 5(4) of the A.P.State Public Distribution System Control Order, 2001 is independent of 6-A proceedings and the disciplinary authority has to exercise his mind independently, but the 2nd respondent has passed the impugned order mechanically without application of mind. It is also stated that the Tahsildar neither issued a notice to the petitioner nor conducted any enquiry before passing the impugned order and therefore, the impugned order is illegal, *void ab initio* and liable to be set aside. It is also further stated that aggrieved by the said order, the petitioner filed an appeal under clause 20(1) of the A.P.State Public Distribution System Control Order, 2001 and also stay petition under clause 20(2) before the 1st respondent on 21-7-2007

specifically contending that the reason shown by the 2nd respondent in the impugned order is not tenable and he cannot place her authorization under suspension till finalization of the 6-A case and that the proceedings u/s.6-A of the Essential Commodities Act are distinct from that of the disciplinary proceedings and the impugned order is not legal and valid. It is further averred by the petitioner that there no variations at all and the 2nd respondent did not specify in his order the alleged variations of stock, but the 1st respondent did not pass any orders either on her stay petition or on appeal till date. It is also further stated that the 2nd respondent ought to have seen that pendency of 6-A proceedings is not a ground to place the authorization under suspension. The authorization cannot be suspended pending finalization of the case u/s.6-A of the Essential Commodities Act. Inspite of the fact that the impugned order is prima facie illegal, the 1st respondent did not pass any orders till date. Therefore, the petitioner has no other alternative except to knock the doors of this Hon'ble Court and for no fault of petitioner, her authorization is suspended on political reasons and that under those circumstances, if the impugned order is not suspended, the petitioner will be put to irreparable loss and hardship.

6. Clause 5 of the A.P.State Public Distribution System Control Order, 2001 deals with ***Issue of Authorization of Fair Price Shops and Establishment*** and sub-clause (4) specifies:-

> *"The appointing authority may, at any time where at the request of the authorized Fair Price Shop or authorized establishment or suo motu after making such enquiry as may be deemed necessary and for reasons to be recorded in writing, add to, amend, very, suspend or cancel the authorization issued or deemed to be issued to him under this clause.*
>
> *Notwithstanding anything contained in sub-clauses (3) and (4) above, where a Fair Price Shop Dealer has been convicted by a Court of law in respect of contravention of any order made Section 3 of the Essential Commodities Act 1955 (Central Act 10 of 1955) relating to any of the Commodities mentioned in the scheduled to this order, the appointing authority, shall by order in writing, cancel his authorization.*
>
> *Provided that such conviction is set aside in any appeal or revision, the appointing authority may, on application in Form-I made by the person whose authorization has been cancelled, reissue the authorization to such person."*

In ***B.Satyanarayana's case*** (***1 supra)*** the learned Judge of this Court while dealing with clause 3(4) of the A.P.Scheduled Commodities (Regulation of Distribution by Card System) Order 1973 which is said to be in *pari*

materia with clause 5(4) of to the_A.P.State Public Distribution System Control Order, 2001 and also Section 6-A of the Essential Commodities Act 1955 observed:-

> *"There are two fatal infirmities in the impugned order passed by the Revenue Divisional Officer as confirmed by the Joint Collector. Before canceling the authorization, no show cause notice was issued to the petitioner and there was no occasion for the petitioner to submit his explanation against the proposed cancellation. In a rent Judgment rendered by me in W.P.No.8452 of 1993, I made the following observations:*
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> > *"It the order in question is construed to be a final order under clause 3 (4), the same cannot be sustained having regard to the fact that the impugned suspension was made ex-parte without giving any opportunity of showing cause against the proposed suspension. Apart from the principles of natural justice, sub-clause (4) of Clause 3 itself speaks of an enquiry. Thus the impugned order is liable to be set aside as being violative of the principles of natural justice and the mandatory requisite of enquiry as contemplated by Clause 3 (4).*
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> *In this case also the authorization of the petitioner was cancelled in violation of the principles of natural justice.*
>
> *The second infirmity I have noticed is that the Revenue Divisional Officer proceeded on the premise that the cancellation of authorization automatically follows on a finding of guilt*

recorded in Section 6A proceedings under the Essential Commodities Act. The Joint Collector while recognizing the correct position that the proceedings under two provisions are different, nevertheless felt that in view of the similarity of the facts, the order need not be disturbed. I do not think that this is a correct approach to the problem. The power of canceling the authorization is confined to the Revenue Divisional Officer. It is for him to issue a show cause notice setting out the specific charges and to take a decision after considering the explanation submitted by the dealer. The concerned statutory authority on whom the power is conferred has to act independently and objectively without being simply led away by the findings given in the Section 6-A proceedings under Essential Commodities Act. The findings in the order passed under Section 6-A may be relevant to some extent and it can perhaps be relied upon, but that is not conclusive. The Revenue Divisional Officer who is a different statutory authority exercising power under Clause 3(4) has to take an independent decision in the matter instead of mechanically following the orders under Section 6-A of the Essential Commodities Act. This essential distinction has not been kept in mind by the Revenue Divisional Officer and the Joint Collector. The impugned order passed by the Revenue Divisional Officer virtually amounts to abdication of power vested in him to another authority, may be a superior administrative authority exercising powers under

a different enactment. That cannot be permitted to be done according to the well established principles of administrative law. On this ground also, the impugned orders are liable to be set aside.

The learned Government Pleader contended that there is a remedy of revision to the District Collector and, therefore, this Court need not interfere. A case of this nature where there is violation of principles of natural justice and there is a misconception as to the scope of powers confined to the authority exercising jurisdiction under A.P.Scheduled Commodities (Regulation of Distribution by Card System) Order, provides an exception to the general rule of availment of alternative remedies."

I n ***P.Hanumantha Rao's case (2 supra)*** the learned Judge observed:-

"Though the exact Control Order under which the power of has been invoked is not mentioned, it is obviously the Andhra Pradesh Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973. Cl.3(4) of the said Order provides for amendment, variation, suspension or cancellation of the authorization issued to the dealer. The suspension contemplated thereunder is a final order of suspension passed after due enquiry. Indisputably it does not take within its fold the suspension pending enquiry as an interim measure. Suspension pending enquiry is not specifically provided for. However,

it can be taken as an implied or ancillalry power vested in the authority empowered to exercise the power of cancellation or suspension as envisaged by sub-clause (4) of Clause 3.

If the order in question is construed to be a final order under Clause 3(4), the same cannot be sustained having regard to the fact that the impugned suspension was made ex parte without giving any opportunity of showing cause against the proposed suspension. Apart from the principles of natural justice, sub-clause (4) of Clause 3 itself speaks of an enquiry. Thus, the impugned order is liable to be set aside as being violative of the principles of natural justice and the mandatory requisite of enquiry as contemplated by Clause 3(4), if the impugned order is treated as an order passed under Clause 3(4). On the other hand, notwithstanding the incorrect mention of the source of power, the order in question can be said to have been passed as an interim measure pending enquiry or investigation, against the petitioner the impugned order still suffers from certain legal infirmities. Except referring to the report of the Asst.Supply Officer and the filing of the case against the petitioner by the Vigilance Cell for certain irregularities' nothing is stated in the impugned order regarding the prima facie violations of the Control Order or the conditions of the authorization. The mere fact that the Vigilance Cell officials registered a case against the petitioner and arrested him, was perhaps found sufficient to direct immediate suspension of

the licence and there is no other indication in the impugned order. It is axiomatice that an authority to whom statutory power is vested has to apply his mind independently and to reach a conclusion-prima facie or otherwise whether any order is to be passed in exercise of that power. The prima facie satisfaction must be that of the 2nd respondent but not that of the Vigilance Officials. It may be that while exercising the power of suspension pending further enquiry, the adverse material which has come to light in course of investigation by the Vigilance Officials can be taken into account. But there should not be mechanical exercise of power based merely on a report that a vigilance case has been filed against the petitioner. Secondly interim suspension of the authorization cannot be made on the ground of mere pendency of 6-A enquiry. There is no such provision in the Control Order. In the very nature of things, interim suspension is meant only to facilitate further enquiry under the provisions of the Control Order and it would only be a preclude to take final action under Clause 3(4) by way of suspension for a specific period of cancellation of the authorization. The 2nd respondent obviously fell into error in assuming that so long as proceedings under Sec.6-A were pending against the petitioner, the suspension of the dealer's licence should be an automatic consequence. In the present case, though nearly two months have elapsed since the date of passing the suspension order, no steps have been taken so far to initiate the enquiry as a step-

in-aid to pass final orders under Clause 3(4). Obviously the 2nd respondent does not want to do anything more than suspending the licence until and unless the case under Section 6-A is disposed of. Such an action cannot be countenanced in law. Suspension of the authorization cannot go on for an indefinite length of time linking it up with the outcome of the proceedings under Section 6-A. No doubt, the material which formed the basis for initiating action under Section 6-A of the Essential Commodities Act by the Vigilance Cell can also form the basis for initiating of the proceedings under Clause 3(4) of the Control Order. But, without contemplating to take any such proceedings, it is not open to the 2nd to pass a blanket order allowing the suspension to remain in force until Sec.6-A proceedings are finalized."

7. In the light of what had been expressed in the impugned order, this Court is of the considered opinion that the impugned order as such cannot be sustained and the same is hereby quashed. The Writ Petition is accordingly allowed. No order as to costs. However, this will not come in the way of the competent authority to initiate or further proceeding with the enquiry, if the competent authority requires to do so.

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Justice P.S.Narayana

11th October, 2007

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[1] 1994 (1) A.L.T., 168

[2] 1993 (3) A.L.T., 442.